

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Date:

May 27, 2008

### Legend

Trust =

Fund A =

Fund B =

Fund C =

Fund D =

Fund E =

Fund F =

State X =

Administrator =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Year 1 =

Dear :

This responds to a letter dated January 15, 2008, and subsequent correspondence submitted on behalf of Fund A, Fund B, Fund C, Fund D, Fund E, and Fund F, (collectively, the “Funds”). Each Fund requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to elect under § 855(a) of the Internal Revenue Code to treat certain dividends distributed after the close of a taxable year as having been paid during that taxable year.

## FACTS

Trust was organized on Date 1 as a State X trust and is registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended, as an open-end management investment company. The Funds are each a series of Trust. Each Fund has made an election to be taxed as a regulated investment company (RIC) under

Subchapter M of the Code. Each Fund files its federal income tax returns on a fiscal year basis.

Administrator provides fund administrative services for the Funds. These services include the preparation of the federal tax returns for the Funds. In Year 1, Administrator instituted use of an on-line calendar to keep track of all tax return due dates and processes that needed to be completed for the funds it administered. When the calendar for the Funds was updated on Date 2 to reflect the timely filing of extensions of time to file each Fund's federal income tax return for the taxable year ended Date 3, the entry was incorrectly placed in an area of the calendar that pertained to the taxable year ended Date 4.

Each Fund's federal income tax return for the taxable year ended Date 4 was due on Date 5. The on-line calendar for the Funds was checked on Date 6, but the calendar did not indicate that any action was necessary. As a result, the Forms 7004 for the Funds for the taxable year ended Date 4 were not timely filed to extend the due date of the Funds' federal income tax returns for the taxable year ended Date 4 from Date 5 to Date 8. The error was discovered on Date 7. On Date 8, the Funds filed Forms 1120-RIC for the taxable year ended Date 4, including with the returns the elections under § 855(a).

The Funds represent that consistent with each Fund's prior distribution practices, the Funds intended to make elections to apply the "spill-back" provisions of § 855(a) of the Code to certain dividends paid after the close of the taxable year ended Date 4. The Funds also represent that the dividend declaration and payment requirements of § 855 are otherwise satisfied with respect to these dividends. The elections were not timely made, however, due to the inadvertent failure to timely file Forms 7004 for the Funds.

Each Fund makes the following additional representations:

1. The request for relief was filed by the Fund before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in the Fund having a lower tax liability in the aggregate for all years to which the regulatory election applies than that Taxpayer would have had if the election had been timely made (taking into account the time value of money).
3. The Fund did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Fund requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, the Fund did not choose to not file the election.

## **LAW AND ANALYSIS**

Section 855(a) of the Code provides that, if a RIC:

(1) declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period for any extension of time granted for filing such return), and

(2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration, the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in subsections (b), (c) and (d).

Section 1.855-1(b)(1) of the Income Tax Regulations sets forth the method of making the election and provides that the election must be made in the return filed by the RIC for the taxable year.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) set forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

**HOLDING**

Based upon the facts presented and representations made by Funds, we hold that the Funds have demonstrated good cause for the granting of relief under § 301.9100-3. Accordingly, each Fund's election under § 855(a) on its federal income tax return filed on Date 8 for the taxable year ended Date 4 will be treated as having been timely made.

No opinion is expressed as to whether each Fund's tax liability is not lower in the aggregate for the year to which the election applies than that Fund's tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director will determine the Fund's tax liabilities for the year involved. If the director determines that a Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of each Fund's election under § 855(a) of the Code. This ruling does not relieve a Fund from any penalty that it may owe as a result of its failure to file its federal income tax return on time. Except as specifically ruled upon above, no opinion is expressed or implied as to any federal excise or income tax consequences regarding Fund. In particular, no opinion is expressed or implied whether any Fund qualifies as a RIC that is taxable under subchapter M, part 1 of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Alice M. Bennett  
Branch Chief, Branch 3  
Associate Chief Counsel  
(Financial Institutions & Products)

Enclosures:

Copy of this letter  
Copy for section 6110 purposes

cc: